Attorney Reference Number 4239-64828-02

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Blackshear et al.

**Application No.** 10/511,362

Filed: October 15, 2004 Confirmation No. 3754

For: COMPOSITIONS AND METHODS FOR

DIAGNOSTICS AND THERAPEUTICS

FOR HYDROCEPHALUS

Examiner:

Art Unit: 2877

Attorney Reference No. 4239-64828-02

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#### **CERTIFICATE OF MAILING**

I hereby certify that this paper and the documents referred to as being attached or enclosed herewith are being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: MAIL STOP PCT, COMMISSIONER FOR PATENTS, OFFICE OF PCT LEGAL ADMINISTRATION, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450 on the date shown below.

Attorney or Agent for Applicant(s)\_\_\_

Date Mailed September 13, 2006

## TRANSMITTAL LETTER

Enclosed for filing in the application referenced above are the following:

Renewed Petition Under 37 CFR 1.10

Exhibit A (Decision on Petition Under 37 CRF 1.10 dated July 14, 2006)

Exhibit B (two true copies of Express Mail Label and Certification)

Exhibit C (copy of Application Transmittal Letter)

Exhibit D (USPS tracking printout)

The Director is hereby authorized to charge any additional fees that may be required, or credit over-payment, to Deposit Account No. 02-4550. A copy of this sheet is enclosed.

Please return the enclosed postcard to confirm that the items listed above have been received.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600

121 S.W. Salmon Street Portland, Oregon 97204

Telephone: (503) 595-5300 Facsimile: (503) 595-5301

cc: Docketing

Ву

Anne Carlson, Ph.D. Registration No. 47,472

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Blackshear et al.

**Application No. 10/511,362** 

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Attorney or Agent for Applicant(s)

Date Mailed September 13, 2006

## RENEWED PETITION UNDER 37 CFR 1.10

Applicants received a Decision on Petition Under 37 CFR 1.10 ("Decision") dated July 14, 2006, for the application referenced above, a copy of which is attached as **Exhibit A**. The Decision acknowledges that the Petition to Correct Filing Receipt (Petition) submitted on June 21, 2005, satisfies 37 CFR 1.10(c)(1) and (2). However, in order to satisfy 37 CFR 1.10(c)(3) Applicants are required to submit a "true copy of the "Express Mail" mailing label (customer receipt) bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing that the original papers were, in fact, deposited as "Express Mail" with the United States Postal Service on October 15, 2004."

As stated in the original Petition, Applicants believe that the erroneous filing date on the Filing Receipt arose because the Express Mail receipt was incorrectly dated October 14, 2004, by the United States Postal Service ("USPS"). Applicants submit herewith as **Exhibit B** two true copies of the "Express Mail" mailing label (having label number EV 514604915 US). These two copies are (top

copy) from before the package was delivered to the USPS, showing the "Date of Deposit" at the bottom of the label, correctly handwritten by Applicants' representative, as October 15, 2004; and (bottom copy) from after the package label was completed by an employee of the USPS, showing the "date-in" incorrectly entered by the USPS as October 14, 2004. The October 15, 2004, Date of Deposit written by Applicants' representative matches the date of deposit listed on the Transmittal Letter that accompanied this application to the Patent Office (Exhibit C), as well as the acceptance date on the USPS tracking printout for this application (Exhibit D). The Transmittal Letter and the USPS tracking printout bear the same Express Mail mailing number (EV 514604915 US) as the Express Mail mailing label.

By this Renewed Petition Applicants request that the USPTO correct the filing date of the application and issue a corrected official Filing Receipt.

Please contact the undersigned if any further information is required.

Respectfully submitted,

One World Trade Center, Suite 1600

121 S.W. Salmon Street Portland, Oregon 97204

Telephone: (503) 595-5300

Facsimile: (503) 595-5301

By

Registration No. 47,472

KLARQUIST SPARKMAN, LLP

## UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

COMPUTER: W/ WBS

Klarquist Sparkman LLP 121 S.W. Salmon Street, Suite #1600 One World Trade Center Portland, Oregon 97204-2988

In re Application of BLACKSHEAR et al.

U.S. App. No.: 10/511,362 PCT No.: PCT/US03/12348 Int. Filing Date: 18 April 200

Int. Filing Date: 18 April 2003 Priority Date: 19 April 2002

Attorney Docket No.: 4239-64828-02

For: COMPOSITIONS AND ME

COMPOSITIONS AND METHODS FOR DIAGNOSTICS AND THERAPEUTICS

FOR HYDROCEPHALUS

DECISION ON PETITION UNDER 37 CFR 1.10

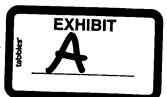
This decision is issued in response to applicants' "Petition to Correct Filing Receipt" which is being treated as a petition under 37 CFR 1.10(c) filed 23 June 2005 requesting that the above identified application be accorded a (35 U.S.C.) 371(c) filing date of 15 October 2004. Petitioner states that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10.

## **BACKGROUND**

On 14 October 2004, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an executed declaration.

On 25 April 2005, a Notification of Acceptance was issued identifying the 35 U.S.C. 371(c) date as 14 October 2004. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 14 October 2004.

On 23 June 2005, applicant filed a "Petition to Correct Filing Receipt." Petitioner avers that the application was deposited via "Express Mail" pursuant to 37 CFR 1.10 on 15 October 2004, rather than 14 October 2004.



2

## DISCUSSION

37 CFR 1.10(c) states:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Petitioner has satisfied items (1) and (2) above. However, with regard to item (3), Petitioner has not submitted a true copy of the "Express Mail" mailing label (customer receipt) bearing the same "Express Mail" mailing number as identified in the certificate under 37 CFR 1.10 that accompanied the application papers showing that the original papers were, in fact, deposited as "Express Mail" with the United States Postal Service on 15 October 2004. Thus, a discrepancy has not been shown to exist as required by 37 CFR 1.10(c).

Accordingly, it is inappropriate, on the present record, to accord a filing date of 15 October 2004.

## CONCLUSION

Applicants' petition under 37 CFR 1.10(c) requesting that a filing date of 15 October 2004 is <u>DISMISSED</u> without prejudice.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10."

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313·1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Anthony Smith Attorney Advisor

Office of PCT Legal Administration

Tel: (571) 272-3298 Fax: (571) 273-0459



Day of Delivery

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Mailing Label Label 11-F June 2002

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UNITED STATES POSTAL SERVICE •

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## **CERTIFICATION**

State of	Oregon
County of	of Multnomah

On this 13 day of September, 2006, I Garrett Hinesley, Notary Public in and for the State and County first named above, certify that the attached one page document is a true, exact, complete and unaltered photocopy of the original Express Mail Label number EV 514604915 US, relative to the patent application listed on the accompanying Renewed Petition Under 37 CRF 1.10.

In witness whereof, I have set my hand and seal on this 13 day of september, 2006.



Notary Public

[NOTARY SEAL]

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c. The Director is hereby authorized to charge any additional fees that may be required, or credit any overpayment, to Deposit Account No. 02-4550. A duplicate copy of this sheet is excluded.								
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NOTE: Where an a or (b)) must	ppropriate time limit we be filed and granted to	nder 37 C.F.R. § 1.494 or restore the application t	§ 1.495 bee oot been coet, s pending states.	odidsą c	a to revive (37	C.F.R. § 1.137(0)		
SEND ALL CORRESP	ONDENCE TO THE AD	DRESS ASSOCIATED V	VITH SIGNATURE	2/	arl	22		
CUSTOMER NUMBER 36218						•		
			Anne Certago	.Ph.D.	·····			
	T SPARKMAN, LLP		NAME		*			
121 S.W. Sa	Frade Center, Suite 1600 Imon Street		<u>47.672</u>					
	97204-2988		REGISTRATI	UM MO	MBER	• •		

cc: Docketing



# Track & Confirm

# Shipment Details

You entered EV51 4604 915U S

Your item was delivered at 8:52 am on October 18, 2004 in ALEXANDRIA, VA 22313 to PATENT OFFICE. The item was signed for by M BOSTON. Detailed shipping information has been restored from files offline.

Here is what happened earlier:

- ARRIVAL AT PICK-UP-POINT, October 17, 2004, 7:16 am, ALEXANDRIA, VA 22313
- ARRIVAL AT UNIT, October 17, 2004, 6:59 am, DULLES, VA 20102
- ENROUTE, October 16, 2004, 7:01 pm, DULLES, VA 20102
- ENROUTE, October 15, 2004, 6:48 pm, PORTLAND, OR 97238
- ACCEPTANCE, October 15, 2004, 4:33 pm, PORTLAND, OR 97205

**Notification Options** 

▶ Request Proof of Delivery

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